

M e m o r a n d u m

Date: June 13, 2006

To: Floyd D. Shimomura, Executive Director
State Personnel Board
801 Capitol Mall
Sacramento, CA 95814

From: **DEPARTMENT OF CALIFORNIA HIGHWAY PATROL**
Office of the Commissioner

File No.: 008.A9684.A3705.R101

Subject: RESPONSE TO THE PRELIMINARY REPORT OF THE STATE
PERSONNEL BOARD'S PRELIMINARY REVIEW OF THE CALIFORNIA
HIGHWAY PATROL'S PERSONNEL MANAGEMENT DIVISION

Via memorandum dated April 17, 2006, I was informed of the State Personnel Board's ("SPB") preliminary finding that the April 2004 appointment of [REDACTED] to the class of State Services Manager I "was not made in good faith and concluded that the appointment was an illegal one." The California Highway Patrol ("the Department") indicated it wished to reply to the finding and requested a copy of the SPB's investigation so as to appropriately respond to the allegations.

On May 24, 2006, my office received another SPB preliminary report, again concerning its January 2006 review of the personnel practices and policies, and specifically the decision of [REDACTED]'s commander to promote her from the lead Administrative Assistant to the Staff Services Management I classification. This memo essentially restated the previous preliminary findings and seeks to impose various reporting and oversight obligations upon the Department.

Included with the second preliminary report was separate correspondence from SPB's Karen Coffee, indicating that a subsequent appointment of [REDACTED] on May 22, 2006 to the class of Staff Services Manager I (SSM I) "was illegal" and that SPB intended to void the SSM I limited-term appointment. The basis for this finding was the (preliminary) illegal appointment in 2004.

Following receipt of the second set of materials representatives from our respective departments met on May 31, 2006 to discuss some of the matters raised in the SPB correspondence. I appreciated your willingness to schedule the meeting on such short notice, as it served to clear

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the air on several issues and resolve what appeared to be confusion on SPB's part with respect to [REDACTED]'s most recent appointment.¹

As the meeting on May 31 did not resolve the overriding outstanding issue with respect to [REDACTED]'s 2004 appointment, I would like to provide you with the Department's response to SPB's preliminary review and findings regarding this issue.

Background

The Department undertook an inquiry in the promotion practices at its Personnel Management Division in February 2004 when concerns were raised internally relative to the appointment of [REDACTED] to the SSM I position. Shortly thereafter the Department's Office of Internal Affairs ("OIA") contacted SPB and the Department of Personnel Administration ("DPA") seeking technical opinions relative to the subject matter being investigated. SPB declined to assume an active role in the inquiry. Based on information provided, it was determined the Department would contract with Cooperative Personnel Services to render technical expertise through the inquiry.

As the Department was concluding its investigation, SPB and DPA, as control agencies, were again contacted for opinion and assessment regarding the investigation's preliminary findings. This resulted in a meeting on November 14, 2005, at Department Headquarters, in which personnel from OIA, SPB, and DPA participated. When the Department subsequently concluded its inquiry, it found that the appointment of [REDACTED] was inappropriate. As a result, the Department took corrective action against the party responsible for initiating and approving the personnel action in question. The Department additionally instituted strict management controls to ensure further appointments were in compliance with the appropriate laws, rules, and regulations of the State.

While undertaking appropriate action, the Department concluded that the actions of [REDACTED] evidenced neither culpability nor wrong-doing. Finding no misconduct or bad faith on her part, the Department determined that corrective action with respect to [REDACTED] was neither appropriate nor necessary.

¹ To recap, [REDACTED]'s status as a result of the SPB inquiry does not, and did not, impact her status and standing on the promotion list for Staff Services Manager I. If SPB ultimately determines to invalidate her 2004 appointment, her status reverts to that of a candidate on an eligibility list for the SSM I position, and she was both reachable and qualified for the May 2006 appointment from the list. She would not revert to eligibility status, however, unless SPB had voided her prior promotion. And since SPB's action to date is only preliminary, and not final, any reversion to eligibility status would at present be premature. Either way, her appointment to her present position would be appropriate, and SPB expressed an understanding and concurrence with this at the May 31 meeting.

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There is no question that when the Department was first made aware of these allegations, it aggressively investigated them, and took the appropriate and necessary corrective action as a result of its inquiry. As was clear from its investigative findings, and as was again represented to SPB personnel on May 31, 2006, as the Department's determination found wrong-doing only on the part of her supervisor, [REDACTED] was not subjective to any corrective action.

SPB nevertheless endeavored to undertake its own inquiry after the Department's investigation was concluded and corrective action taken. The May 24 preliminary report concentrates its criticism on and with respect to the conduct of [REDACTED] supervisor. It specifically documents, and focuses on, what SPB believes was improper. In the preliminary draft, the four bulleted "audit results" on page four, and the "directives and action items" on pages six and seven, are specific and applicable exclusively to her supervisor.

In both the April and May preliminary drafts, SPB's discussion of [REDACTED], unlike that of the discussion pertaining to her supervisor, is inferred and implied. The detail and specificity of the findings with respect to her supervisor were lacking in the analysis and discussion of [REDACTED].

This Department has endeavored to discern the basis for the SPB preliminary findings that [REDACTED] in some manner conspired with, her manager to effectuate her promotion. Presumably the evidence review undertaken by the SPB, and individual interviews conducted by the SPB, were duplicative of the same efforts of the Department in its investigative inquiry. [REDACTED] denied the insinuations of collusion and was found by the Department to be credible in her interview, thus supporting the conclusion that while the appropriate individual accused of wrong-doing had been identified, the Department found no evidence of a secret combination, or concert of action between two or more persons for fraudulent or deceitful purpose with respect to others, and specifically with respect to [REDACTED]. It is clear even in her interview with SPB, she believed she supervised six individuals and there was a "joint" supervisory role with the Commander.

As a result of its inquiry, the Department instituted strict management controls to ensure further appointments were in compliance with the appropriate laws, rules, and regulations of the State. As was indicated to you in our meeting on May 31, many action items indicated in the May 24 preliminary draft are unnecessary, irrelevant, or overreacting to what the Department now believes has been addressed in an appropriately corrective manner. A memorandum to Personnel Management Division employees from the commissioner should not be necessary. While some form of probation and monitoring may, in a mutually agreed-upon manner, be worthwhile, the SPB's Merit Employment and Technical Resources Division's approval of all PMD list appointment, transfer, and reinstatement hiring packages prior to each proposed effective date for an indefinite and unspecified period of time is unnecessarily burdensome and risks bringing the division's hiring processes to a grinding halt. And while the Department has always indicated,

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and reiterated at the May 31 meeting, that SPB was welcome to review whatever hiring and appointment materials it believed necessary for its official purposes, requiring the Department to compile a list of all appointments of any kind for the prior two-year period and "strongly recommending" that DPA staff "immediately conduct an audit review of the position allocations with PMD and give careful consideration to CHP's delegated personnel management functions" would appear to be overly broad, overly vague, and overly excessive.

The Department appreciates SPB's concerns in this matter. Both of our departments are, and should be, on the same page with respect to insuring the integrity of the promotions process and taking the necessary corrective steps when it is determined that such a process has been improperly utilized. The Department believes in this instance it has thoroughly investigated this matter, properly identified the party responsible, and appropriately taken the necessary and supportable corrective measures as a result.

Even in SPB's hearing of [REDACTED] she was told, "we are not here to discipline anybody, that is not our role at all . . ." I believe any proposed action against [REDACTED] must be evaluated on the evidence derived from the investigations and in the proper context which SPB established during the interview. I know SPB may not see any action against [REDACTED] as disciplinary in nature; however, it will be clearly viewed as such by an employee who did not act in bad faith.


M. L. BROWN
Commissioner

cc: Jonathan S. Rothman
General Counsel